

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-219356.2**DATE:** June 27, 1985**MATTER OF:** Sunrise Associates--Request for
Reconsideration**DIGEST:**

If a firm initially protests to the contracting agency, alleging a defect in the solicitation, the agency's opening of bids without taking the requested corrective action is the initial adverse agency action, and a subsequent protest to our Office more than 10 working days later is untimely.

Sunrise Associates (Sunrise) requests reconsideration of our June 4, 1985, dismissal of its protest as untimely under section 21.2(a)(3) of our Bid Protest Regulations, 4 C.F.R. part 21 (1985).

We affirm our prior dismissal.

By invitation for bids (IFB) No. 1340-5-0003, the United States Department of the Interior, National Park Service (National Park Service), solicited offers for a tractor. On May 13, 1985, Sunrise telephoned the National Park Service to protest that the specifications in the solicitation were unclear and to request information it believed was necessary to make an accurate bid. Despite Sunrise's complaints, bid opening occurred as scheduled on May 14.

In its original protest to our Office, Sunrise argued that the solicitation was improper because certain information regarding equipment capability was missing. Due to its confusion with the specifications, Sunrise said, it increased its bid and was no longer the low bidder. We dismissed the protest as untimely because it was not filed until June 4, which was more than 10 working days after the initial adverse agency action.

In its request for reconsideration, Sunrise says that it did not have knowledge of the adverse agency action until May 30, when it received notice of the contract award and, therefore, its June 4 protest was within the 10-day filing period.

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Sunrise's earlier protest was properly dismissed as untimely. If a protest has been filed initially with the contracting agency, any subsequent protest to the GAO must be filed within 10 working days of actual or constructive knowledge of the initial adverse agency action. See 4 C.F.R. § 21.2(a)(3) (1985). The fact that bid opening occurs without the agency taking any corrective action in response to a protest constitutes initial adverse agency action. Leon's Auto Repair, B-215625, July 20, 1984, 84-2 C.P.D. ¶ 74. Here, bid opening occurred on May 14 despite Sunrise's protest the day before to the National Park Service. Therefore, Sunrise should have known that the agency was not going to correct the specifications and this was Sunrise's initial adverse agency action. Since the protest was not filed with our Office until June 4, it was untimely.

The dismissal is affirmed.

for 
Harry R. Van Cleave
General Counsel